

IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE-02,
WEST DISTRICT-DELHI.

Civ DJ No.- 990/2023
CNR NO. DLWT01-009437

Sh. Shanker Dass Falwaria
S/o late Sh. Dharam Das
R/o 25/3, Ashok Nagar, (Tihar-II_
Delhi-110018
Mobile No. 9868912670
E-Mail: fulwariametraindia@gmail.com

.....Plaintiff.

Versus

1. Sh. Pradeep Kumar
S/o late Sh. Uday Ram
2. Laxmi Devi
W/o Sh. Pradeep Kumar

Both are residing at 31/5,
Ground floor, Back portion
Ashok Nagar (Tihar-II), New Delhi-110018
Mob- 9958377242, 9873875082, 9818678905

.....Defendants

**Order on the application under order XXXVII rule 3(5) of
CPC for seeking Leave to contest/defend the suit.**

1. The defendants have moved the present application for

seeking unconditional leave of the court to defend the claim raised by the plaintiff for seeking recovery of Rs. 13,83,437/-.

2. The brief factual recapitulation leading to filing of the present suit u/o 37 CPC would be relevant.

3. As per plaint, the defendant no. 1 and defendant no. 2 are husband and wife and residing with their children and both are in possession of the back side portion, ground floor of built-up property bearing 31/5, land ad-measuring 40 sq. yards without roof rights, situated at Ashok Nagar, New Delhi-110018 (hereinafter referred to as 'the suit property'). It is further averred in the plaint that defendant no. 1 was desired to sell the suit property for a total sale consideration of Rs. 13,00,000/- and in this effect the defendants and plaintiff had entered into an Agreement for Sale-cum-Bayana receipt on 11.10.2021 and defendant no. 2 was one of the witness and all their children were also present at the time of execution of aforesaid agreement.

4. It is further averred in the plaint that in view of above, plaintiff transferred Rs. 11,65,000/- as advance money by way of cheques, cash through his banker State Bank of India, Subhash Nagar Branch, New Delhi. It is further averred that as per above Agreement for sale-cum- Bayana Receipt, it was agreed between the defendant no. 1 and plaintiff that balance sale consideration amount of Rs. 1,35,000/- would be paid on or before 10.11.2021 and then defendant no. 1 would hand over the possession of the suit property and execute the necessary transfer documents of the suit property in favour of the plaintiff.

5. It is further averred in the plaint that thereafter plaintiff expressed his willingness and readiness and desire to pay the balance sale consideration amount of sale proceed of the suit property as per aforesaid agreement but on each and every time instead of showing promptness, the defendant no. 1 has always been delaying the same on one pretext or the other and avoided the plaintiff for fulfilling the part of obligation, the reasons best known to the defendant no.1.

6. It is further averred by the plaintiff in the plaint that defendant no. 1 had finally decided to refund the amount of Rs. 11,65,000/- received as advance at the time of execution of the transfer documents including Sale Deed. It is further averred that it is specifically mentioned in the Agreement for Sale-Cum-Bayana Receipt that” in case first party (i.e. the defendant) failed to execute the agreement on the date decided above, shall pay double amount of earnest money/Bayana”.

7. It is further averred in the plaint that the defendant no. 1 in discharge of his liability had issued two cheques to the plaintiff i.e. cheque bearing no. 087028 dated 06.11.2021 for an amount of Rs.3,40,000/- and cheque bearing no. 087040 dated 11.11.2021 for an amount of Rs.8,25,000/-, both drawn on State Bank of India, 5-B/4, Main Najafgarh Road, Tilak Nagar, New Delhi-18 and assured the plaintiff to represent the aforesaid cheques before the bank of plaintiff for encashment.

8. It is further averred by the plaintiff that on presentation of above said cheques for realization and enchashment, the same

were dishonoured with the remarks as “Funds Insufficient” vide cheque returning memos dated 10.11. 2021 and 12.11.2021 respectively. It is further averred in the plaint that despite repeated requests and demands made by the plaintiff, the defendant no. 1 has failed to make the payment of Rs. 11,65,000/- and as such defendant has intentionally and deliberately withheld the said amount and failed to pay his outstanding liability as per terms and conditions of the above said agreement, and consequently, advocate of the plaintiff sent a legal notice dated 29.11.2021 to defendant no. 1 bringing his knowledge about the dishonour of the above said cheques and requested to make the payment within 15 days of the receipt of the said notice. However, defendant no. 1 neither replied to the above said notice nor showed his intention to repay the amount and hence, plaintiff filed a complaint case under section 138 of N.I. Act against the defendant no.1 which is pending in the court of of Sh. Vaibhav Pratap Singh, Ld. M.M. District West, Tis Hazari Court, Delhi.

9. It is further averred in the plaint that during the pendency of matter, to avoid the liability, the defendant no. 1 has executed a false Gift Deed with malafide intention in respect of suit property in favour of defendant no. 2 for which he has taken money from the plaintiff. It is further averred that after receiving the certified copy of Gift Deed on 12.09.2023, the plaintiff got assured that the defendant no. 1 in connivance with defendant no. 2 have cheated him and transferred the suit property in the name of defendant no. 2, hence plaintiff filed the present suit against the defendants for recovery of Rs. 13,83,437/-.

10. It is further averred in the plaint that thereafter on 03.02.2022, plaintiff had moved a complaint before SHO, P.S. Hari Nagar, Delhi vide DD No. 40 A and further complaint to DCP, West on 05.03.2022 against the defendant but no action has been taken by the aforesaid departments and thus plaintiff filed further complaint on 18.03.2022 to Police Complaint Authority, New Delhi and Commissioner of Police, Delhi but no action has been taken then, plaintiff has sent a reminder letter dated 25.08.2022 to DCP, West vide dairy no. 8003/GD/W and at last the plaintiff filed a complaint dated 16.10.2023.

11. It is further averred by the plaintiff that defendants in spite of repeated requests and notices have failed to pay the above said amount, therefore, the plaintiff filed the present suit for a decree of Rs. 11,65,000/- as principal amount, Rs. 2,18,437/- as interest from last date of payment i.e. 11.10.2021 till 10.11.2023 hence total Rs. 13,83,437/-. Plaintiff is also claiming pendent-lite interest @ 9% p.a on principal amount of Rs. 11,65,000/- with cost of the suit in his favour.

12. Summons of the suit under order 37(2) CPC in the form 4 as prescribed in Appendix-B was issued to the defendants. The defendants were served on 2.12.2023 and statutory appearance on behalf of defendants was put in the court on 08.12.2023 by filing memorandum of appearance in the court. Thereafter application for issuance for summons for judgment were given to ld. counsel for the defendant on 15.02.2024. In the present case summons for judgment has not been issued to the defendants as ld. counsel for the defendants appeared in the court on

15.02.2024 and received application for issuance of summons for judgment. The present leave to defend application under order 37 rule 3(5) CPC has been filed on behalf of defendants on 16.02.2024 on e-sewa at Suvidha Kendra. Since summons of judgments has not been issued to the defendants the present application for leave to defend is considered to be filed within limitation.

13. In the application seeking leave to defend, it is contended by the defendants that the plaintiff has concealed the basic and material facts from the Hon'ble court and has given misleading statements to acquire unlawful gains for himself.

14. It is averred in the affidavit by defendant no. 1 that the case of the plaintiff is solely based upon the agreement to sale and Bayana Receipt dated 11.10.2021, however, the first thing to be noted herein that e-stamp paper no. mention at page no. 2 of the above said agreement, is not the same as mentioned on the E stamp paper, which clearly shows that the documents filed before this Hon'ble Court are forged and fabricated.

15. It is further averred in the affidavit by defendant no.1 that the agreement to sell entered into between the plaintiff and defendant no. 1 has already been cancelled vide cancellation of agreement dated 27.10.2021 and it has been mutually decided between the plaintiff and defendant no. 1 that as the plaintiff does not wish to purchase the said property from defendant no. 1, hence both the parties have mutually decided to cancel the deal/transaction in respect of the suit property and the first party has returned the earnest money to the plaintiff.

16. It is further averred in the affidavit by defendant no. 1 that there is no such transaction left between the parties to be performed, which has been claimed by the plaintiff against defendant no. 1. It is further averred that it has already been mentioned in the Cancellation Agreement that the plaintiff had promised to return the cheques and property documents of the defendant no. 1, however, even after several requests, the plaintiff had not returned the same to defendant no. 1.

17. It is further averred in the affidavit of defendant no. 1 that plaintiff has even violated the terms of Cancellation of Agreement by misusing the Agreement to sell which already stands cancelled as well as by misusing the cheques in question. It is further averred that one case u/s 138 of N.I Act is also filed by plaintiff against the defendant no. 1 and is pending for trial and defendant is contesting the same. It is further averred that cause of action never arose to the plaintiff for filing present suit against the defendant no. 1 and plaintiff will not be adversely affected in any manner whatsoever if the leave to defend/contest is granted to the defendant.

18. The defendant no. 2 has also filed affidavit alongwith the leave to defend application and it is averred by defendant no. 2 that there is no relief against the defendant no. 2 as neither she had signed the agreement to sell nor she had given any of the cheques in question to the plaintiff. It is further submitted that defendants have raised substantial defence in their favour which disproves the contentions of the plaintiff. It is further averred that defendant no. 2 has disclosed number of fact which are

sufficient to grant leave to defend the present suit to the defendants.

19. It is further contended in the leave to defend application by the defendants that the plaintiff had already entered into an agreement for cancellation of agreement to sell on 27.10.2021 and at that time due to injury of his right hand, plaintiff requested for putting thumb impression and the document writer had asked both the parties to put their thumb impressions. It is further contended that plaintiff had even promised to return the property documents and the cheques given to him and not to misuse the same.

20. It is further contended by the defendants that cheques in question are the part of the cancellation agreement and the defendants have no liability towards the plaintiff. It is further contended that defendant no. 2 has no role to play in it, therefore, no cause of action has arisen against her.

21. The Plaintiff has filed reply to the above said application and took preliminary objections that the application filed by the defendants is liable to be dismissed as there is no ground of defence in favour of the defendants and on the other hand the plaintiff will get success in present matter even in prima facie as the liability is admitted by defendant no. 1 before the Hon'ble court of Sh. Vaibhav Pratap Singh, Ld. M.M. District West, u/s 251 Cr.P.C, 1973.

22. It is further averred in the reply that the present application has been filed by the defendants only to delay the proceedings, or that defendant have not come to the court with clean hands and the present application has been filed by the defendants in connivance of each other and is false and vexatious application.

23. On merit, most of the contents of the leave to defend application have been denied as wrong. It is vehemently denied that plaintiff has already entered into an agreement for cancellation to sell on 27.10.2021. It is denied that defendant no. 2 has no role to play in it, therefore, no cause of action arisen against her. It is submitted that the cheques were given by defendants to plaintiff for returning the advance money given by plaintiff at the time of execution of agreement to sell so no question arise of misusing the cheques by the plaintiff.

24. *I have heard the arguments from both sides and have gone through the entire case file .*

25. The case of the plaintiff is that defendant no. 1 had entered into an agreement to sell dated 11.10.2021 with the plaintiff and defendant no. 2 had also signed the said agreement as a witness. The plaintiff transferred Rs.11,65,000/- as advance money to defendant no. 1 and balance amount of Rs. 1,35,000/- had to be paid on or before 10.11.2021. Thereafter defendant no. 1 delayed the execution of the sale deed on one pretext or other and finally decided to refund the amount of Rs. 11,65,000/- to the plaintiff and issued two cheques bearing no. 087028 dated

6.11.2021 of the amount of Rs. 3,40,000/- and cheque bearing no. 087040 dated 11.11.2021 of the amount of Rs. 8,25,000/- to the plaintiff but the above said both cheques got dishonoured with the remarks "Funds Insufficient " vide cheque returning memos dated 10.11.2021 and 12.11.2021.

26. Ld. counsel for the defendants has argued that the agreement to sell was cancelled vide document i.e. Cancellation of Agreement to sell executed on 27.10.2021. Ld. counsel for the defendants has further argued that the defendants has already returned the earnest/advance money to the plaintiff and the plaintiff assured the defendants that he would return all the four cheques i.e. cheque no. 087028, 087031, 087034 & 087040 to the defendants and will not misuse the same. He further argued that there is no liability of the defendants to pay any amount to the plaintiff and plaintiff has misused the cheques in question.

27. In reply to leave to defend application, the plaintiff has denied the above said contention of the defendants. The plaintiff has not mentioned in his reply as to whether the cancellation of agreement to sell bears his thumb impression or not.

28. In the present case the plaintiff is seeking a relief of passing of decree of principal amount of Rs. 11,65,000/- alongwith interest against the defendants. Admittedly, the deal of the suit property was entered between plaintiff and defendant no. 1 and agreement to sell was also entered between plaintiff and defendant no. 1 and the cheques for returning the above said amount have also been given by defendant no. 1 and not by

defendant no. 2. There is no document on record regarding any liability of defendant no. 2 to return any of the amount from the above said principal amount of Rs. 11,65,000/- to the plaintiff. In the absence of any document regarding above said liability of Rs. 11,65,000/- against the defendant no. 2, decree u/o 37 CPC cannot be passed against defendant no. 2 without leading evidence.

29. In view of the above said facts, the court is of the opinion that defendants have raised substantial triable issues and without leading evidence, it cannot be decided as to whether plaintiff has executed the cancellation of agreement to sell in favour of defendant no. 1 by putting his thumb impression. In case, defendants succeed in proving the above said document i.e. cancellation of agreement to sell, in which it is written that defendant no. 1 has returned the advance money to the plaintiff and plaintiff assured the return of cheques including both cheques of the present suit then plaintiff will not be able to receive any amount from the defendants.

30. In view of the above said facts and discussions, the leave to defend application filed on behalf of the defendants is allowed. Defendants are allowed to file written statement within 30 days from today with advance copy to ld. counsel for the plaintiff.

**Announced in the open court
on 14th July, 2025**

**(SHIV KUMAR)
District Judge-02
(West), Delhi**